

1 CATHERINE CORTEZ MASTO
2 Attorney General
3 MERCEDES S. MENENDEZ
4 Deputy Attorney General
5 Nevada Bar No. 9443
6 Bureau of Litigation
7 555 E. Washington Avenue, Suite 3900
8 Las Vegas, Nevada 89101
9 Tel: 702-486-3420
10 Fax: 702-486-3773
11 E-Mail: mmenendez@ag.nv.gov
12 *Attorneys for Defendants,*
13 *Bannister, Holmes, Johns,*
14 *Mumford, and Sanchez*

15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 12 COLBERT NICHOLS,)
18 13 Plaintiff,) Case No. 2:09-cv-01698-LDG-GWF
19 14)
20 v.)
21 15)
22 ROBERT BANNISTER, et. al.,)
23 16)
24 Defendants.)
25 **DEFENDANTS' MOTION FOR**
26 **ENLARGEMENT OF TIME TO RESPOND TO**
27 **PLAINTIFF'S FRCP RULE 60(b) MOTION,**
28 **and/or IN THE ALTERNATIVE, MOTION**
29 **FOR RECONSIDERATION (Doc. #71)**

30 COME NOW Defendants, ROBERT BANNISTER, JAMES HOLMES, MARSHA
31 JOHNS, DAVID MUMFORD, and FRANCISO SANCHEZ, by and through their counsel,
32 Catherine Cortez Masto, Nevada Attorney General, and Mercedes S. Menendez, Deputy
33 Attorney General, of the State of Nevada Office of the Attorney General, and hereby submits
34 an extension of time for the filing of their response to Plaintiff's FRCP RULE 60(b) Motion
35 and/or in the Alternative, Motion for Reconsideration (Doc. #71) for the reasons stated in the
36 accompanying Memorandum of Points and Authorities.

37 ///
38 ///
39 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

4 Plaintiff Colbert Nichols ("Plaintiff"), who is presently in the custody of the Nevada
5 Department of Corrections ("NDOC") and serving a prison sentence at the Northern Nevada
6 Correctional Center, has a civil rights action pending in this Court. His three-count amended
7 complaint alleges (1) that a currently unidentified physician at the Clark County Detention
8 Center ("CCDC") failed to treat a shoulder injury Plaintiff sustained while in CCDC custody
9 over a four-month period; (2) that this same physician denied the treatment for budgetary
10 reasons; and (3) that NDOC Medical Director Robert Bannister, and NDOC physicians
11 James Holmes, Marsha Johns, Francisco Sanchez and David Mumford ("Defendants"), who
12 sat on the Utilization Review Panel ("URP") on September 16, 2008, refused to refer Plaintiff
13 for a magnetic resonance imaging scan ("MRI"). Doc. #23. The Court screened the amended
14 complaint and recognized the action as stating an Eighth Amendment claim involving
15 deliberate indifference against Defendants. Doc. #19.

18 On June 6, 2012, Defendants moved to Reinstate their Motion for Summary Judgment
19 (Doc. #50), to which the Plaintiff filed his Response on November 14, 2012. Doc. #57. On
20 September 27, 2013, the Court granted Defendants' Motion for Summary Judgment, thereby
21 dismissing the case. Doc. #68. Judgment in favor of the Defendants was entered that same
22 day. Doc. #69.

24 On November 7, 2013, Plaintiff filed his present motion, stating the Court erred when
25 granting Defendants' Motion for Summary Judgment. Doc. 71. The Motion contains eighteen
26 pages of small print and makes numerous references to medical records, thereby requiring
27 defense counsel to review each entry in order to provide an appropriate response. This office
28 has been down one Deputy Attorney General, due to the recent departure of one attorney

1 back in mid October. Defense counsel believes she will need fourteen (14) days to
2 adequately prepare a response to the subject motion.

3 **II. LAW AND ANALYSIS**

4 Fed. R. Civ. P. 6(b) provides in pertinent part:

5 (1) *In General.* When an act may or must be done within a specified time, the
6 court may, for good cause, extend the time:

7 (A) with or without motion or notice if the court acts, or if a request is made,
8 before the original time or its extension expires;

9 LR 6-1 provides in pertinent part:

10 (a) Every motion requesting a continuance, extension of time, or order
11 shortening time shall be "Filed" by the clerk and processed as an expedited matter. . . .

12 (b) Every motion or stipulation to extend time shall inform the court of any
13 previous extensions granted and state the reasons for the extension requested. . . .
14 Immediately below the title of such motion or stipulation there shall be included a
15 statement indicating whether it is the first, second, third, etc., requested extension....

16 Defense counsel requires an additional fourteen (14) days to review all the notations
17 and medical records referenced in Plaintiff's subject motion. Good cause exists for the
18 needed extension of time. See Declaration of Mercedes S. Menendez attached hereto as
19 Exhibit "A." This Motion is being made prior to the expiration of the deadline and not for the
20 purpose of delay.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 Based upon the foregoing, Defendants request a fourteen (14) day extension of time
3 for the filing of their answer or other responsive pleading to **December 9, 2013**.

4

5 Dated: November 22, 2013.

6 Respectfully submitted,

7 CATHERINE CORTEZ MASTO
8 Attorney General

9

10 By: /s/ Mercedes S. Menendez _____
11 MERCEDES S. MENENDEZ
12 Deputy Attorney General
13 Nevada State Bar No. 9443
14 *Attorneys for Defendants,
15 Bannister, Holmes, Johns, Mumford, and
16 Sanchez*

17

18 ORDER

19 IT IS SO ORDERED.

20 DATES this 26 day of November, 2013.

21

22

23

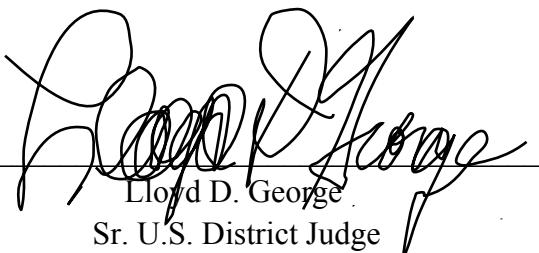
24

25

26

27

28



Lloyd D. George
Sr. U.S. District Judge